

REMARKS

Pending in the present application are claims 1-5, 7-11, 13 and 16-21 of which claims 1, 8 and 16 are independent. In the Office Action, claims 1-5, 7-11, 13 and 16-21 were rejected under 35 U.S.C. § 103(a) as unpatentable over Heidingsfeld et al. (U.S. Pat. No. 6,823,359) in view of Meyer (U.S. Pat. No. 6,157,943). The Office Action rejected the declaration ("Third Declaration") by the inventor, Stephen C. Appling submitted with the Response filed January 16, 2008 for failing to establish reduction to practice of Applicant's invention prior to the earliest priority date of Heidingsfeld et al.

In response to previous Office Actions citing Heidingsfeld et al. and Meyer, two declarations by the inventor, Stephen C. Appling, and one declaration by Attorney Michael Pavento were submitted under 37 C.F.R. § 1.131. The declarations by Mr. Appling and Mr. Pavento establish invention of the subject matter of the pending claims prior to the earliest filing date of Heidingsfeld et al. and reasonable diligence in preparing the present application for filing with the USPTO from a date just prior to the effective date of Heidingsfeld et al. until the filing of the present application. In spite of the declarations of both the Inventor and the Attorney responsible for final revisions and filing the present application, the Office Action of July 23, 2007 rejected the evidence submitted and maintained that the declarations did not show detailed proof as required under M.P.E.P. § 2138.06. Therefore, a third declaration by the inventor Stephen Appling establishing conception and actual reduction to practice of Applicant's invention was submitted in response to the Office Action of July 23, 2007.

The Third Declaration included three exhibits supported by the statements of the inventor, Stephen C. Appling, establishing work on Applicant's invention in January of 1999 and the demonstration of a working product, WebCTRL, at the AHR Expo in February of 2000. As established by the statements of the inventor, the WebCTRL product included an embodiment of the Applicant's invention that existed and operated as intended at the exposition in February of 2000.

The Office Action of April 8, 2008 objected to the Third Declaration first because

Exhibit 1, the document entitled “Greenhouse UI Architecture” (hereafter “Greenhouse”) stated that all components “need to be developed.” The Office Action apparently completely fails to even consider what was already developed at the time the document was last updated. Just because the work described in Exhibit 1 was ongoing does not somehow negate what was already complete. Because the Office Action apparently failed to consider the actual content of the exhibit submitted, the contents will be elucidated here along with a comparison to the claim language of the present application.

Section 3.1 of Greenhouse states:

“[a]ll of the graphics pages will contain **dynamic content which will be updated separately from the main page via a hidden (inline) frame that just evaluates JavaScript. This frame will be pointed at an expression evaluation servlet that returns JavaScript.** The expressions to be [sic] **should be read from a server side XML conditions file** associated with that graphics page.”

Independent claim 1 recites a method for updating objects contained within a web page including:

1. displaying a web page;
2. creating a frame having a height of zero and a width of zero within the web page;
3. displaying outside the frame an updateable object within the web page,
4. configuring the frame to periodically request updated data from a server; and
5. configuring the frame to cause the updateable object to be updated in response to receiving the updated data such that updating the updateable object updates only a portion of the web page.

The updateable object corresponds to an HVAC system. The updated data comprises an instruction set for causing the frame to update the updateable object.

Greenhouse states “[a]most all of the **client side pages** will rely on an ALC JavaScript library ... [t]his will **allow us to do this in a cross browser way** if we decide to.” Response of January 16, 2008, Exhibit 1, § 1. In other words, the document describes an application that includes client side pages that will run in a web browser and therefore discloses step 1 of claim 1, “displaying a web page.”

With regard to steps 2 and 3 of claim 1, Greenhouse also states that “[a]ll of the **graphics pages** will contain **dynamic content which will be updated** separately from the main page via a **hidden (inline) frame**.” *Id.* at § 3.1. As described in the specification of the present application and as one of ordinary skill in the art would understand, creating a frame having a height of zero and width of zero is equivalent to “a hidden (inline) frame” as described in Greenhouse. *See* App. Serial No. 09/747,366, p. 3 line 32 – p. 4 line 7 (“An IFRAME is an HTML element that allows webpage authors to insert a frame in the middle of a webpage. Thus, for example, an IFRAME may be inserted within a block of text ... [i]n an exemplary embodiment of the present invention, however, the IFRAME is not used for displaying content. Instead, the IFRAME **may be rendered invisible** within the main web browser window **by setting both its height and width attributes to a value of zero**.”). Pages including “dynamic content which will be updateable” described in Greenhouse is equivalent to the step of displaying updateable objects within the web page and because the frame has a height and width of zero and the objects are actually displayed they are necessarily outside of the frame as required by step 3 of claim 1.

With regard to steps 3 and 4 of claim 1, Greenhouse states that the inline frame is configured to “evaluate JavaScript” and that it is “**pointed at** an expression evaluation **servlet** that returns JavaScript.” Greenhouse also states that the “expressions ... should be read from a **server side XML conditions file**.” Finally, Greenhouse states that the dynamic content on the pages is “**updated separately from the main page via a hidden (inline) frame**.” Greenhouse therefore discloses that the frame is configured “to periodically request updated data from a server” by pointing the frame at a servlet that returns JavaScript from the server (i.e. server side XML file) to be evaluated by the frame. Greenhouse also discloses that the frame is configured “to cause the updateable object to be updated in response to receiving the updated data such that updating the updateable object updates only a portion of the web page” by describing that the dynamic content will be updated separately from the page on which it is displayed by the hidden IFRAME that is configured to receive the update data in JavaScript from a server side XML file.

Because the content painstakingly described above is established by Greenhouse

itself, Attorneys for Applicant are at a loss as to what other explanation or further statements from the inventor are needed to demonstrate the relevance of the document in establishing conception and reduction to practice of an embodiment of the invention claimed in the present application prior to the prior art date of Heidingsfeld et al.

The Office Action next objected to the Third Declaration because the statements of the inventor related to the Exhibits 2 and 3 make “it unclear what exactly was disclosed at the [AHR] Expo” in February of 2000. Attorneys for Applicant are not sure what exactly is unclear either about the relevance of Exhibits 2 and 3 or the statements of the inventor in the Third Declaration.

Exhibit 2, as explained in the Third Declaration, is an advertisement from the January 2000 ASHRAE Journal for the AHR Expo on February 7 and 8 of 2000. Exhibit 2 is therefore intended to show simply that an exposition called the “AHR Expo” did in fact occur in the year 2000 and the days on which it occurred were February 7 and 8.

Exhibit 3 is an advertisement from the February 2000 ASHRAE Journal describing and showing the product, “WebCTRL”, that as the advertisement describes was to be demonstrated at the AHR Expo on February 7 and 8 of 2000. Exhibit 3 is therefore intended to show that Applicant’s produced a product named WebCTRL sometime before February of 2000 and advertised the upcoming demonstration of this new product at the AHR Expo on February 7 and 8.

The statements of the inventor in the Third Declaration attest to the fact that the WebCTRL product was in fact demonstrated and did in fact operate as intended at the AHR Expo on February 7 and 8, 2000. The statements of the inventor in the Third Declaration go on to attest to the fact that the WebCTRL product included an embodiment of the invention claimed in the present application. Third Declaration of Stephen C. Appling, ¶ 8 (“Built into WebCTRL is an embodiment of the invention claimed in the ‘366 application. Specifically, WebCTRL includes the functions to dynamically update objects in a web page using an invisible frame configured to periodically request information, such as sensor readings from a component of a building HVAC system, from a server and update the object with the information requested from the server.”).

Therefore, taken together, the Exhibits and the Third Declaration establish that a product of Applicant's named WebCTRL that included an embodiment of the invention claimed in the present application was reduced to practice and demonstrated at least as early as February 7 and 8, 2000, which was prior to the prior art date of Heidingsfeld et al.

The Third Declaration of the inventor also explains that "[a]lthough an embodiment of the invention claimed in the '366 application was included in the demonstration of WebCTRL at the AHR Expo, the invention was not publicly disclosed." *Id.* at ¶ 10. As would be apparent to one of ordinary skill in the art, it is possible to demonstrate a product including an embodiment of the invention claimed in the present application without publicly disclosing the invention. A key feature of the invention claimed in the present application is providing a mechanism for updating select objects in a web page without the necessity of the time consuming process of refreshing the entire page. As described throughout the specification and as required by the claims of the present application, the mechanism for providing this functionality is a frame embedded in the web page that has a height and width of zero, or, an **invisible** inline frame. When displaying a web page employing the functions of the invention claimed in the present application, the viewing public would see the objects on the page update but **would not see nor have any way to tell that an invisible frame** was the mechanism causing the objects to update. This explanation is of course true for other functions required by the claims, such as the invisible frame querying a server side file to check for and retrieve updated data for updating the objects on the web page. The viewing public does not see an invisible frame requesting updated data from the server. Therefore, as explained in the Third Declaration and as would be apparent to one of ordinary skill in the art, "[t]he functions for dynamically updating objects contained within a web page were not publicly disclosed at the AHR Expo, because it was only the results, i.e. objects on the page being updated, which were discernable through the public demonstration of the WebCTRL product."

The Third Declaration of Stephen Appling submitted with the Response filed January 16, 2008 establishes that the invention claimed in the present application was conceived and reduced to practice prior to the US filing date of Heidingsfeld et al. Because the Third

Declaration establishes that the claimed invention in this application was made prior to the November 21, 2000, Heidingsfeld et al. does not qualify as prior art under 35 U.S.C. § 103(a). Therefore, the rejections based upon Heidingsfeld et al. should be withdrawn.

Respectfully submitted,

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